

**ORDINANCE NO. 28431**

**AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING CHAPTER 4.76 OF TITLE 4 OF THE SAN JOSÉ MUNICIPAL CODE BY AMENDING SECTIONS 4.76.240 AND 4.76.270 TO CLARIFY THE DUE DATE FOR THE INITIAL PAYMENT OF THE BUSINESS TAX AND TO REVISE THE DUE DATE FOR SUBSEQUENT PAYMENTS OF THE BUSINESS TAX TO CORRESPOND WITH THE CITY'S NEW BUSINESS TAX BILLING SYSTEM AND BY AMENDING SECTION 4.76.290 TO CLARIFY THE PENALTY PROVISIONS FOR LATE PAYMENT, AND BY ADDING A NEW SECTION 4.76.295 TO AUTHORIZE THE DIRECTOR OF FINANCE TO WAIVE PENALTIES UNDER CERTAIN CIRCUMSTANCES; AND TO PROVIDE THAT THE CURRENT BUSINESS TAX DUE DATES WILL APPLY UNTIL SUCH TIME AS THE NEW BILLING SYSTEM IS SUCCESSFULLY IMPLEMENTED**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSÉ:

SECTION 1. Section 4.76.240 of Chapter 4.76 of Title 4 of the San José Municipal Code is amended to read as follows:

**4.76.240 Annual Certificate – Term**

- A. Any certificate evidencing payment of the business tax which is payable on an annual basis shall become valid on the date on which the City receives payment in full of the tax and, if applicable, interest and penalties. Regardless of the date of payment of the business tax, the certificate evidencing payment of the business tax by a new business shall be dated as of the date on which the business commenced and the certificate evidencing the annual payment of the business tax shall be dated as of the due date for payment of the business tax.

- B. The certificate issued on an annual basis shall remain valid until the due date for the annual payment of the business tax as specified in Section 4.76.270.

SECTION 2. Section 4.76.270 of Chapter 4.76 of Title 4 of the San José Municipal Code is amended to read as follows:

**4.76.270 Time For Payment**

All business taxes imposed by this Chapter shall be due and payable as follows:

- A. Business taxes paid on an annual basis shall be paid in advance. Business taxes shall become due and payable on the following dates:
1. Subject to the provisions of Section 4.76.290, the first business tax payment is due and payable on the first date on which the person engaged in business in the City, and
  2. Each business tax payment thereafter is due and payable annually on the fifteenth (15<sup>th</sup>) day of the calendar month during which the person first engaged in business in the City.
- B. Notwithstanding Subsection A.2., for those business tax accounts that were assigned to make the annual payment of the business tax during a calendar quarter that was not the calendar quarter in which the business tax was first due to the City, the business taxpayers shall make their annual payment of the business tax on the fifteenth (15<sup>th</sup>) day of the first month of the calendar quarter in which they have been making payment of the business tax, as determined by the Director of Finance.

- C. The due date for business taxes that are paid on a monthly basis shall be the last day of the month immediately following the month for which the tax is payable.
- D. In the case of a business that is discontinued, dissolved or otherwise terminated before the expiration of a business tax period, the due date for any taxes accrued and owing to the City under the provisions of this Chapter, including any business taxes that would not otherwise be paid until the close of the business tax period during which termination occurs or would not otherwise be paid until the time of paying the tax for the next succeeding business tax period, shall be the date of termination of the business.

SECTION 3. Section 4.76.290 of Chapter 4.76 of Title 4 of the San José Municipal Code is amended to read as follows:

**4.76.290 Payment – Penalty for Delinquency; 45-Day Grace Period For New Businesses**

- A. Any person who fails or refuses to pay any business tax required to be paid pursuant to this Chapter on or before the due date shall pay penalties and interest as follows:
  - 1. A penalty equal to twenty-five percent (25%) of the amount of the tax in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at a rate established by resolution of the City Council; and
  - 2. An additional penalty equal to twenty-five percent (25%) of the amount of the tax if the tax remains unpaid for a period exceeding one calendar month beyond the due date, plus interest on the unpaid tax and interest

on the unpaid penalties calculated at the rate established by resolution of the City Council.

- B. Notwithstanding Subsection A., if the first time the business tax is due the taxpayer pays the tax in full within forty-five (45) days of the due date, the City shall waive all penalties and interest accruing to the date of payment. This waiver only applies to the first time that the business tax is due for a new business.
- C. Any person engaged in the business of operating a solid waste disposal facility who fails to pay any business tax required to be paid under Section 4.76.490 on or before the due date shall pay penalties and interest equal to ten percent (10%) of the amount of the tax, in addition to the amount of the tax, if payment is received by the Director of Finance within one business day of the due date. Thereafter, penalties and interest shall accrue at the rates provided in Subsection A. above.
- D. Whenever a check is submitted in payment of a business tax and said check is subsequently returned unpaid by the bank upon which said check is drawn, and the check is not redeemed prior to the due date, the taxpayer will be liable for the tax amount due plus penalties and interest as provided for in this Section plus any amount allowed under state law.
- E. Except for new businesses that qualify under Subsection B., if any person has failed to apply for and secure a valid certificate, the business tax due shall be that amount due and payable from the first date on which the person was engaged in business in the City, together with applicable penalties and interest calculated in accordance with Subsection A above.

SECTION 4. Chapter 4.76 of Title 4 of the San José Municipal Code is amended to add a new section, to be numbered, entitled and to read as follows:

#### **4.76.295 Waiver of Penalties**

The Director may waive the first and second penalties of twenty five percent (25%) each imposed upon any person if:

- A. The person provides evidence satisfactory to the Director that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent business tax and accrued interest owed the City prior to applying to the Director for a waiver.
- B. The waiver provisions specified in this Subsection shall not apply to interest accrued on the delinquent tax and a waiver shall be granted only once during any twenty-four month period.

**SECTION 5.** The provisions of Sections 1 and 2 of this ordinance shall take effect for annual payment of business taxes that are due and payable in January, 2009, and thereafter. In the event the changes to the new business tax billing system are not successfully implemented, as determined by the Director of Finance, then the current business tax due dates as set forth in Chapter 4.76 of Title 4 of the San José Municipal Code as of the date of this Ordinance is passed for publication will apply until such time that the Director of Finance issues a renewal notice to the business taxpayer specifying the business tax payment date as specified in Section 2 of this Ordinance.

PASSED FOR PUBLICATION of title this 28th day of October, 2008, by the following vote:

AYES: CHIRCO, CHU, CONSTANT, CORTESE, LICCARDO,  
NGUYEN, OLIVERIO, PYLE, WILLIAMS; REED.

NOES: NONE.

ABSENT: CAMPOS.

DISQUALIFIED: NONE.

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk